



11-17-06

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PTO/SB/64 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

Burk-100

First named inventor: Burkhardt, Reed

Application No.: 09/847,590

Art Unit: 2157

Filed: May 2, 2001

Examiner: Sargon Nano

Title: System and Method For Automated Negotiation For and Allocation of a Broadcast Satellite

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ 750 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of hardcopy letter response (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

11/20/2006 RHEBRAHT 00000007 09847590 750.00 0P
01 FC:2453

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Walt Froloff
Signature

11/14/06
Date

Walt Froloff

52,923

Typed or printed name

Registration Number, if applicable

273D Searidge Rd, Aptos, CA 95003

831-685-2446

Address

Telephone Number

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay.

☒ Other: Return Receipt postcard, Power of Attorney

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

11/15/06
Date

Walt Froloff
Signature
WALT FROLOFF
Typed or printed name of person signing certificate



Burk-100: 09/847,590

Law Office of
WALT FROLOFF

273 D Searidge Rd
APTOS, CALIFORNIA 95003

Telephone: (831) 685-2446

Email: Walt@PatentAlchemy.com

Patents and Trademarks

**Petition For Revival of an Application for Patent
Abandoned Unintentionally Under 37 CFR 1.137(b)**

In re Application of

**System and Method For Automated Negotiation For and Allocation of a Broadcast
Satellite, Communication and Caching System Resource**

Application No.: 09/847,590

Group Art Unit: 2157

Confirmation No.:

Examiner: Sargon Nano

Filed: May 2, 2001

For: **Reed Burkhardt**

Date: November 14, 2006

Subject: **Petition to Revive an Application for Patent Abandoned Unintentionally
for Patent Application Number: 09/847,590.**

Mail Stop Petition
Commissioner for Patents
P.O.Box 1450,
Alexandria, VA 22313-1450

Law Office of
WALT FROLOFF

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Telephone: (831) 685-2446

Email: Walt@PatentAlchemy.com

Patents and Trademarks

Dear Petition Specialist:

I am petitioning revival of Patent Application Number: 09/847,590, as applicant was under extenuating and excruciating circumstances, unintentionally abandoning this application.

Applicant's parents died, prior to which applicant was forced to care for his mother dying of cancer. Father committed suicide. Shortly thereafter applicant went through a divorce and was forced to care for his 4 children. Between applicant's constant forced relocations for family members and his patent attorneys office migrations, many transfer inquires, response period restarts, and job moves, communication on application became impossible to track and status. During this chaos many attempts to facilitate and complete the patenting process occurred as shown in "Reed Burkhardt Patent Application - Partial Transaction History" document. An email from applicant to myself describing this period and is also included in "Email from Reed Burkhardt to Walt Froloff discussing Unintentional Abandonment" document. Applicant finally learned that the application lapsed after he initiated diligence in contacting his patent attorney to inquire about application status after he did not receive any communication from his attorney of power. Under these dire conditions, applicant received no timely notice from his representative and hence unintentionally abandoned the application.

Please find the completed PTO/SB/64 "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) and enclosed petition fee in check form. The accompanying first office action response did not require a reply fee. Thank you in advance for your diligence in this matter.

Sincerely,



Walt Froloff
Patent Attorney
Reg. No. 52,923



Reed Burkhart Patent Application – Partial Transaction History

09/847,590 System and method for automated negotiation for and allocation of a broadcast satellite, communication and caching system resource

Date	Transaction Description
10-05-2006	Mail Abandonment for Failure to Respond to Office Action
10-02-2006	Abandonment for Failure to Respond to Office Action
08-17-2005	Mail Notice of Restarted Response Period
08-16-2005	Letter Restarting Period for Response (i.e. Letter re: References)
08-12-2005	Correspondence Address Change
07-18-2005	Mail Notice of Restarted Response Period
07-17-2005	Letter Restarting Period for Response (i.e. Letter re: References)
07-13-2005	Correspondence Address Change
11-17-2004	Mail Non-Final Rejection
11-15-2004	Non-Final Rejection
06-21-2004	Case Docketed to Examiner in GAU
05-21-2004	IFW TSS Processing by Tech Center Complete
04-07-2003	Reference capture on IDS
04-07-2003	Information Disclosure Statement (IDS) Filed
11-02-2003	Case Docketed to Examiner in GAU
08-28-2003	Transfer Inquiry to GAU
08-28-2003	Transfer Inquiry to GAU
08-23-2003	Transfer Inquiry to GAU
07-01-2003	Transfer Inquiry to GAU
05-13-2003	Application Dispatched from OIPE
05-14-2003	Application Is Now Complete
08-29-2001	Payment of additional filing fee/Preexam
05-13-2003	Correspondence Address Change
06-27-2001	Application Is Now Complete
06-27-2001	Notice Mailed--Application Incomplete--Filing Date Assigned
06-26-2001	Correspondence Address Change
05-11-2001	IFW Scan & PACR Auto Security Review
05-02-2001	Initial Exam Team nn

Mail Room Date	Document Description	Page Count
10-05-2006	<u>Abandonment</u>	2
08-22-2005	<u>Mail returned to USPTO as undelivered</u>	16
08-16-2005	<u>Letter Restarting Period for Response (i.e. Letter re: References)</u>	1
08-04-2005	<u>Change of Address</u>	2
07-18-2005	<u>Letter Restarting Period for Response (i.e. Letter re: References)</u>	1
10-2005	<u>Mail returned to USPTO as undelivered</u>	15
11-17-2004	<u>Non-Final Rejection</u>	13
11-17-2004	<u>List of references cited by examiner</u>	1
11-17-2004	<u>List of References cited by applicant and considered by examiner</u>	1

Email from Reed Burkhart to Walt Froloff discussing Unintentional Abandonment

To: "Walt Froloff" <patentalchemy@yahoo.com>
CC: "Burkhart Reed" <burkhart@alumni.caltech.edu>, reed@astound.net
Subject: some points in a kind of timeline about my slowness to respond to USPTO
From: "Reed Burkhart" <burkhart@alumni.caltech.edu>
Date: Sun, 12 Nov 2006 19:39:48 -0800

Hi Walt,

November 6-10. Last week (as of this writing, November 12, 2006) was the first week I took off work since joining Space Systems/Loral at the end of July 2005. Several tragedies that came together before joining Space Systems/Loral had weakened me severely economically and had simultaneously challenged my health. These tragedies began with my parents' health troubles, leading to my father's violent suicide (blew his own head off with a 44 mag), immediately followed by my mother's discovering late-stage terminal colon cancer (I became her primary caregiver), shortly following which my wife filed for divorce (which unfortunately was pretty contentious, including contention for custody of my three young children, with the custody being split evenly -- something I was very concerned about for the protection of my children where the mother had a history with us of uncontrolled anger to the point of physical altercations between her and my children). The divorce court ruled that my three children should live in Walnut Creek, where we had lived before my father's suicide and before my mother's discovery of terminal cancer. I finally found work -- after a little more than a year of looking for full time work near Walnut Creek and not being able to find it (including at Townsend & Townsend & Crew where a friend got me an interview to work supporting international patent activities, but Townsend felt with my excellent background, that whenever I WAS offered a job in my industry that I would surely leave, because the pay would be much, much more than they were paying ... which pay rate I was extremely desirous to get, even though at a fraction of my prior earnings, because I was borrowing money from family members just to shelter and feed my children). So, after sending out 100's of resume, and finding little response and interest, I finally found employment interest at Space Systems/Loral, and, after a six-month interview process, was hired as essentially the first employee hired by Space Systems/Loral after they shedded more than 50% of their workforce (during their bankruptcy) as they went from about 3,000 employees down to about 1,300. Space Systems/Loral is located in Palo Alto, a roughly two-hour, one-way commute from Walnut Creek (i.e. I must spend about 20 hours per week JUST DRIVING to and from my work). I was also not able to afford housing in the school district where my children go to school, so we live in a neighboring school district, requiring additional daily time commuting the children to and from school. Several difficult issues have continued to demand my time, primarily resulting from the economic disaster - as a consequence of having been working on my own dime to commercialize the present invention (which had included discussions of investment, although no formal offers) just before tragedies of suicide, cancer and divorce struck, and my mother and my father (before his suicide ... I was the

last to speak with him) began relying on me physically and emotionally as the nearest/closest family member with a knack for supporting others in dealing with such challenging issues. All this, the divorce, and my being out of work, had taxed me further economically (as the divorce began, I discovered that my wife had put more than \$100,000 on credit ... when she had assured me that we had only taken \$25,000, and at that time I still had about \$75,000 in resources, but that \$75,000 was consumed during 2003/2004). My difficult economic situation remaining to this day, representing a key reason why I have not been able to take time away from work before now, because I can not put my employment at risk (that would put at risk the income needed to shelter and clothe my children). I also developed health issues that needed attention that there was either not time nor economic resources to deal with while caring for others in my family. With the new job I was finally again with health insurance and able to begin attending to some of my own health issues that had accrued unaddressed during the prior years of tragedy (I needed a root canal and some teeth to be removed, which was done in the last year finally, and discovered that the pains I had felt in my heart had likely been caused by the dental infections that I had not had time or finances to treat until I got the job). I was not able to attend to these health issue during the period I was at my mother's side helping her fight for her life against her colon cancer, a time during which I occasionally found myself caring for my bed-bound mother AND my three young children simultaneously, sometimes all four by myself for weeks at a time with little to no help from others, while also navigating a contentious divorce. This medical work that I needed, as important as it was, it did not seem possible to begin attending to during the first part of my work at Space Systems/Loral, because the job itself was so critical to my family for shelter and food, and it was taking literally all my time that was not spent taking care of my children, that I felt I dared not take time to begin my medical treatments until December 2005. Since December 2005, I've needed to go to one or another dental, orthodontic, etc. specialist regularly and am only a little more than half done in the remedial work that is required to get my body healthy again. If all these things were not enough, on the very first day of my new job, my vehicle, an old Volvo, failed completely during the return trip to my home in Walnut Creek, and I learned that it would cost more to fix than it was worth. So the first month at my work I was learning a new job, commuting by bike and train from Walnut Creek to Palo Alto, shopping for another car (and getting kids around and groceries, etc. by bicycle) while still dealing with other overhang issues from the tragedies, which overhangs have continued to require meetings with a tax expert for dealing with several issues to correct taxes for 2002, 2003, and 2004, while negotiating payment plans with the IRS, etc. On top of everything else, my job is not at all an 8 to 5 job, but regularly requires me to work late at night (I've even worked completely through the night on a few occasions to meet deadlines) and I regularly work each weekend - in part because much of the work is new to me and I must learn it to remain employed and to keep sheltering and feeding my children, but also in part because the team at work is understaffed making the work itself at our company very demanding as a result of Space Systems/Loral having reduced the workforce by so many people (although now Space Systems/Loral is trying to do hire many more employees again), and as a result of Space Systems/Loral currently using just a fraction of the

personnel (around 1,300) to do the same level of work that Space Systems/Loral was doing before with 3,000. The first I heard about office actions on my patents pending was sometime in August or September 2005, shortly after beginning work at this new job. If I had heard about these office actions just months before when I did (just after joining Space Systems/Loral), was I was still unemployed (or underemployed) it would have been quite simple for me to respond within weeks or months to them. Finally, last week, having learned from James Hsue in a telephone call of early October 2006, that the final date I had for response on the office action for the automated negotiation for broadcasting et al patent application was November 17, 2006, and having found it impossible to attend to a response to the office action during my wearying weeks after weeks of insufficient sleep and too much work, I finally managed to negotiate with my employer for a week off of work for my personal business - as the only way I could attend to these office actions in timely fashion. My employer was not at all happy about my asking for this time off, and I hope I have not risked my job because of my taking this time off, because in the short term it will be very difficult to keep my children sheltered and fed if I were to lose this job. As it is, I do not feel I have the time resources now to respond to the office action for my second patent application - a situation which would have been different had the US Patent Office and my attorney not fumbled communications between them in a process that I was unfortunately not as familiar with as I see that it would have been useful for me to have been (since I might have been able to avoid the problem by regularly checking with my attorney, although I was reluctant to do that given that my children's shelter and food was at risk economically, and my attorney would be charging me for such time spent).

Some dates going back. (1999 forward)

Approximately September 1999 ... my last paycheck for work in my field before starting at Space Systems/Loral.

March/April 2000. Filed provisional patent applications for two patents.

2000/2001. Business development and due diligence on the inventions - including about one man year's effort producing an extensive (44MB) model of all global Internet, including every user in every country and a model of the econometrics associated with the traffic. The results of this model led to interest in my innovations from several key prospective business partners, including one of America's leading scientist/businessmen, Dr. Phil Neches, founder and architect of the world's first and most successful application of parallel computing (TeraData Corporation, which was sold to AT&T/NCR for about \$1B).

2002/2003. It was really on the eve' of my building a team for the next phase of commercializing of these ideas (with interested parties beginning to discuss investment, joining the team, etc. Phil Neches himself began working together with me on the business plan!) , when in December 2001, my parents' problems began distracting me heavily from my work, including my father's suicide in June 2002, followed the day after his services by my mother's discovery of late stage terminal colon cancer and being given only 3 months to live (she

ended up living more than a year from then, passing late in 2003).

2004/2005. As I began cleaning up and picking up the pieces after my parents' tragedies, I was looking for work while still working through a contentious divorce, now living 3 hours from the bay area, but coming to the bay area regularly in search of work - unable to afford moving back, because of no income and very limited economic resources. At risk of losing custody of my children, I took a risky gamble of moving back to Walnut Creek in August 2004, so that I could care for my children half time as they returned to school. It would be another year before I was able to find regular work, and it was a year of constant economic crises, with occasional necessary help from some very kind family members. While I felt weak and suspected it was a combination of exhaustion from the physical and emotional stresses I had been managing, I also knew it might be some health problems that were creeping in that I must get health insurance before being able to attend to. In 2004/2005 I worked as both a driver and general assistant (helping with software development and negotiating with business partners) to Mike Faith, founder and CEO of Headsets.com in San Francisco for a time, and then found temporary work teaching a college mathematics course at Silicon Valley College, but most of the time I was looking for work (and would have been happy to have learned of office actions that I could respond to!). In early 2005, I had a job bite with Space Systems/Loral, which it took about another 6 months to convert into an offer. I began working at Space Systems/Loral the last week of July 2005, and have had little sleep since as the work has been quite challenging, and I've needed to begin putting my life back together.